ILLINOIS POLLUTION CONTROL BOARD January 26, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
V.)	PCB 07-35
)	(Enforcement - Water)
BRADSHAW ENTERPRISES, LLC, an)	
Illinois limited liability corporation, and)	
BRIAN BRADSHAW, individually,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On November 14, 2006, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Bradshaw Enterprises, LLC, an Illinois limited liability corporation, and Brian Bradshaw, individually (collectively, Bradshaw respondents). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns a December 2003 hog waste release to an unnamed tributary of Mount Branch, tributary of North Fork of the Embarrass River, resulting in a fish kill. The facility is a 1,000 sow farrow-to-wean hog production facility in the southwest quarter of Section 15, Township9 North, Range 14 West, in Clark County.

The People allege that the Bradshaw respondents violated Sections 12(a), (d), and 12(f) of the Environmental Protection Act (Act) (415 ILCS 5/12(a),(d), and (f) and the Board's water regulations at 35 III. Adm. Code 302.203, 302.212(a), and 501.405. The People further allege that the Bradshaw respondents violated these provisions by causing or allowing water pollution, creation of a water pollution hazard, violating water quality standards for total ammonia nitrogen and offensive conditions and release of a waste from a point discharge into waters of the State without applying for and obtaining a permit under the National Pollutant Discharge and Elimination System (NPDES).

On November 14, 2006, along with the complaint, the People and the Bradshaw respondents filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)). See 35 III. Adm. Code 103.300(a), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. See 35 III. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in the *Casey Reporter* on December 26, 2006; any timely hearing request was due to be filed January 16, 2007. The Board did not receive any requests for hearing. The Board grants the

parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2004); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondents operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004)), which may mitigate or aggravate the civil penalty amount.

The stipulation asserts that the total amount the Bradshaw respondents expended to achieve compliance was \$93,000, involving replacement of the irrigation system with an injection system. Under the proposed stipulation, the Bradshaw respondents neither admit nor deny the alleged violations but agree to pay a civil penalty of \$3,500.

The People and neither have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement. The Board has outlined the gist, but not the details, of the stipulation's contents in the order below. In summary, the Board assesses a civil penalty of \$3,500.

This docket is now closed. This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement. In summary, the Board assesses a civil penalty of \$3,500.
- 2. The Bradshaw respondents, through their attorney of record, must pay a civil penalty of \$3,500 no later than February 26, 2007, which is the first business day after the 30th day after the date of this order. The Bradshaw respondents, through their attorney of record, must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Illinois Environmental Protection Agency, designated for deposit into the Environmental Protection Trust Fund. The case number, case name, and the Bradshaw respondents' federal employer identification number must be included on the certified check, money order, or electronic funds transfer statement.
- 3. The Bradshaw respondents, through their attorney of record, must send the certified check, money order, or electronic funds transfer to the following address:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

4. The Bradshaw respondents, through their attorney of record, must send a copy of the certified check, money order, or record of electronic funds transfer and any transmittal letter to the following persons at the indicated address:

Jane E. McBride Assistant Attorney General Environmental Bureau 500 South. Second Street. Springfield, Illinois 62702

James Day Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

- 5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
- 6. The Bradshaw respondents must cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 26, 2007, by a vote of 4-0.

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Dorothy M. Gunn, Clerk Illinois Pollution Control Board